

**CHAPTER 634**

AN ACT

SB 1008

Relating to juvenile offender sentencing; creating new provisions; amending ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203; prescribing an effective date; and providing for criminal sentence reduction that requires approval by a two-thirds majority.

**Be It Enacted by the People of the State of Oregon:**

**CUSTODY OF JUVENILE OFFENDERS****SECTION 1.** ORS 137.071 is amended to read:

137.071. (1) The judge in a criminal action shall ensure that the creation and filing of a judgment document complies with this section. On appeal, the appellate court may give leave as provided in ORS 19.270 for entry of a judgment document that complies with this section but may not reverse or set aside a judgment, determination or disposition on the sole ground that the judgment document fails to comply with this section.

(2) A judgment document in a criminal action must comply with ORS 18.038. In addition, a judgment document in a criminal action must:

(a) Indicate whether the defendant was determined to be financially eligible for purposes of appointed counsel in the action.

(b) Indicate whether the court appointed counsel for the defendant in the action.

(c) If there is no attorney for the defendant, indicate whether the defendant knowingly waived any right to an attorney after having been informed of that right.

(d) Include the identity of the recorder or reporter for the proceeding or action who is to be served under ORS 138.081.

(e) Include any information specifically required by statute or by court rule.

(f) Specify clearly the court's determination for each charge in the information, indictment or complaint.

(g) Specify clearly the court's disposition, including all legal consequences the court establishes or imposes. If the determination is one of conviction, the judgment document must include any suspension of sentence, forfeiture, imprisonment, cancellation of license, removal from office, monetary obligation, probation, conditions of probation, discharge, restitution, community service and all other sentences and legal consequences imposed by the court. Nothing in this paragraph requires the judgment document to specify any consequences that may result from the determination but are not established or imposed by the court.

(h) Include the identities of the attorney for the state and the attorney, if any, for the defendant.

**(i) If the court sentences the defendant to a term of incarceration, and the physical custody of the defendant as determined by ORS 137.124 is related to the age of the defendant at the time of committing an offense, indicate the age of the defendant at the time of committing the offense.**

(3) A judgment document in a criminal action that includes a money award, as defined in ORS 18.005, must comply with ORS 18.048.

(4) The requirements of this section do not apply to a judgment document if the action was commenced by the issuance of a uniform citation adopted under ORS 1.525 and the court has used the space on the citation for the entry of a judgment. The exemption provided by this subsection does not apply if any indictment, information or complaint other than a uniform citation is filed in the action.

**(5) For the purposes of determining the defendant's age at the time of committing an offense under subsection (2) of this section:**

**(a) If the defendant is convicted of two or more offenses occurring on different days, the defendant's age shall be calculated using the earliest date.**

**(b) If the defendant is convicted of an offense occurring within a range of dates, the defendant's age shall be calculated using the date at the beginning of the range.**

**SECTION 2.** ORS 137.124 is amended to read:

137.124. (1) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that exceeds 12 months:

(a) The court shall not designate the correctional facility in which the defendant is to be confined but shall commit the defendant to the legal and physical custody of the Department of Corrections; and

(b) If the judgment provides that the term of incarceration be served consecutively to a term of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this state upon conviction of a felony, the defendant shall serve any remaining part of the previously imposed term of incarceration in the legal and physical custody of the Department of Corrections.

(2)(a) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the supervisory authority of the county in which the crime of conviction occurred.

(b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the Department of Corrections if the court orders that the term of incarceration be served consecutively to a term of incarceration that exceeds 12 months that was imposed in a previous proceeding

or in the same proceeding by a court of this state upon conviction of a felony.

(3) After assuming custody of the convicted person the Department of Corrections may transfer inmates from one correctional facility to another such facility for the purposes of diagnosis and study, rehabilitation and treatment, as best seems to fit the needs of the inmate and for the protection and welfare of the community and the inmate.

(4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall commit the defendant to the custody of the supervisory authority of the county in which the crime of conviction occurred.

(5)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the Department of Corrections under ORS 137.707 **or due to the fact that criminal proceedings were initiated after the person attained 18 years of age**, the Department of Corrections shall transfer the physical custody of the person to the Oregon Youth Authority as provided in ORS 420.011 if:

(A) The person will complete the sentence imposed before the person attains 25 years of age;

(B) The Department of Corrections and the Oregon Youth Authority determine that, because of the person's age, immaturity, mental or emotional condition or risk of physical harm to the person, the person should not be incarcerated initially in a Department of Corrections institution; or

(C) The person is under 18 years of age at the time of sentencing and commitment.

(b) A person placed in the custody of the Oregon Youth Authority under this subsection who is at least 18 years of age shall be returned to the physical custody of the Department of Corrections whenever the Director of the Oregon Youth Authority, after consultation with the Department of Corrections, determines that the conditions or circumstances that warranted the transfer of custody under this subsection are no longer present.

(c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections. As part of the agreement with the Department of Corrections, the sheriff may designate the county juvenile department or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff has entered into a written agreement with the county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

(6)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the legal and physical custody of the Department of Corrections or the supervisory authority of a county following waiver under ORS 419C.349 **(1)(b)**, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 **(5)(b)(A)** or **(7)(b)** or 137.712, the De-

partment of Corrections or the supervisory authority of a county shall transfer the person to the physical custody of the Oregon Youth Authority for placement as provided in ORS 420.011 **(3)**. The terms and conditions of the person's incarceration and custody are governed by ORS 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections or the supervisory authority of a county transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections or supervisory authority of the county. As part of the agreement with the Department of Corrections or supervisory authority of the county, the sheriff may designate the county juvenile department or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff has entered into a written agreement with the county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

(b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS 419C.349 **(1)(b)**, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility for physical custody as provided in ORS 420.011 **(3)**.

*[(7) If the Director of the Oregon Youth Authority concurs in the decision, the Department of Corrections or the supervisory authority of a county shall transfer the physical custody of a person committed to the Department of Corrections or the supervisory authority of the county under subsection (1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:]*

*[(a) The person was at least 18 years of age but under 20 years of age at the time of committing the felony for which the person is being sentenced to a term of incarceration;]*

*[(b) The person is under 20 years of age at the time of commitment to the Department of Corrections or the supervisory authority of the county;]*

*[(c) The person has not been committed previously to the legal and physical custody of the Department of Corrections or the supervisory authority of a county;]*

*[(d) The person has not been convicted and sentenced to a term of incarceration for the commission of a felony in any other state;]*

*[(e) The person will complete the term of incarceration imposed before the person attains 25 years of age;]*

*[(f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment programs administered by the Oregon Youth Authority;]*

*[(g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons in the custody of the Oregon Youth Authority; and]*

*[(h) At the time of the proposed transfer, no more than 50 persons are in the physical custody of the Oregon Youth Authority under this subsection.]*

[(8)] **(7)** Notwithstanding the provisions of [subsections] **subsection** (5)(a)(A) [or (7)] of this section, the department or the supervisory authority of a county may not transfer the physical custody of the person under subsection (5)(a)(A) [or (7)] of this section if the Director of the Oregon Youth Authority, after consultation with the Department of Corrections or the supervisory authority of a county, determines that, because of the person's age, mental or emotional condition or risk of physical harm to other persons, the person should not be incarcerated in a youth correction facility.

[(9)] **(8)** Notwithstanding any other provision of this section, under no circumstances may a person under 18 years of age be incarcerated in a Department of Corrections institution.

**(9) If a defendant is transferred under subsection (5) of this section, the defendant shall also be transferred after a resentencing on the same charges resulting from an appellate decision or a post-conviction relief proceeding or for any other reason, even if the defendant is 20 years of age or older at the time of the resentencing.**

**(10) For the purposes of determining the person's age at the time of committing an offense under this section:**

**(a) If the person is convicted of two or more offenses occurring on different days, the person's age shall be calculated using the earliest date.**

**(b) If the person is convicted of an offense occurring within a range of dates, the person's age shall be calculated using the date at the beginning of the range.**

**SECTION 3.** ORS 420.011 is amended to read:

420.011. (1) Except as provided in subsections (2) and (3) of this section, admissions to the youth correction facilities are limited to youth offenders who are at least 12 but less than 19 years of age, found by the juvenile court to have committed an act that if committed by an adult would constitute aggravated murder, murder, a felony or a Class A misdemeanor and placed in the legal custody of the Oregon Youth Authority. A youth offender admitted to a youth correction facility may not be transferred by administrative process to any penal or correctional institution.

(2)(a) In addition to the persons placed in the legal custody of the youth authority under ORS 419C.478 (1) or 419C.481, and with the concurrence of the Director of the Oregon Youth Authority or the director's designee, persons who are committed to the Department of Corrections under ORS 137.124 and meet the requirements of ORS 137.124 (5) [or (7)] may be temporarily assigned to a youth correction facility as provided by ORS 137.124 (5) [or (7)]. A person assigned on such a temporary basis remains within the legal custody of the Department of Corrections and such reassignment is subject to termination by the Director of the Oregon Youth Authority by referring the person back to the

Department of Corrections as provided in paragraph (b) of this subsection.

(b) After a person is transferred to the physical custody of the youth authority under ORS 137.124 (5) [or (7)], the Director of the Oregon Youth Authority may refer the person back to the Department of Corrections for physical custody and placement if the director, after consulting with the Department of Corrections, determines that the person is at least 18 years of age and:

(A) Poses a substantial danger to youth authority staff or persons in the custody of the youth authority; or

(B) Is not likely, in the foreseeable future, to benefit from the rehabilitation and treatment programs administered by the youth authority and is appropriate for placement in a Department of Corrections institution.

(3) Any person under 18 years of age at the time of committing the crime and under 20 years of age at the time of sentencing and commitment who, after waiver under ORS 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, is sentenced to a term of imprisonment in the custody of the Department of Corrections, and any person under 16 years of age who after waiver under ORS 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712 is sentenced to a term of imprisonment in the county jail, shall be temporarily assigned to a youth correction facility by the Department of Corrections, or by the sheriff to whose custody the person has been committed, pursuant to ORS 137.124 (6). The director shall designate the appropriate youth correction facility or schools for such assignment. A person assigned to a youth correction facility under ORS 137.124 (6) and this subsection remains within the legal custody of the Department of Corrections or sheriff to whose custody the person was committed. The assignment of such a person to the youth correction facility is subject, when the person is 18 years of age or older, to termination by the director by referring the person back to the Department of Corrections or the sheriff to serve the balance of the person's sentence. Assignment to a youth correction facility pursuant to ORS 137.124 (6) and this subsection, if not terminated earlier by the director, shall terminate upon the person's attaining the age specified in ORS 420A.010 (5) setting the age limits for which the Oregon Youth Authority may retain legal and physical custody of the person, and the person shall be referred to the Department of Corrections or the sheriff having legal custody of the person to serve the balance of the person's sentence.

(4) Whenever a person committed to the custody of the Department of Corrections is temporarily assigned to a youth correction facility pursuant to this section, the youth authority may provide programs and treatment for the person, and may adopt rules relating to conditions of confinement at the youth correction facility, as the youth authority determines are appropriate. However, the person remains

subject to laws and rules of the State Board of Parole and Post-Prison Supervision relating to parole.

**(5) For the purposes of determining the person's age at the time of committing an offense under this section:**

**(a) If the person is convicted of two or more offenses occurring on different days, the person's age shall be calculated using the earliest date.**

**(b) If the person is convicted of an offense occurring within a range of dates, the person's age shall be calculated using the date at the beginning of the range.**

#### WAIVER TO ADULT COURT

**SECTION 4.** ORS 137.705 is amended to read:

137.705. (1)(a) As used in this section and ORS 137.707:

(A) "Charged" means the filing of an accusatory instrument in a court of criminal jurisdiction [alleging the commission of an offense listed in ORS 137.707].

(B) "Detention facility" has the meaning given that term in ORS 419A.004.

(C) "Prosecuted" includes pretrial and trial procedures, requirements and limitations provided for in criminal cases.

(b) Unless otherwise provided in ORS 137.707, ORS chapters 137 and 138 apply to proceedings under ORS 137.707.

[(2)(a) Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17 years of age at the time of committing the offense may be charged with the commission of an offense listed in ORS 137.707 and may be prosecuted as an adult.]

[(b) The district attorney shall notify the juvenile court and the juvenile department when a person under 18 years of age is charged with an offense listed in ORS 137.707.]

[(c) The filing of an accusatory instrument in a criminal court under ORS 137.707 divests the juvenile court of jurisdiction in the matter if juvenile court jurisdiction is based on the conduct alleged in the accusatory instrument or any conduct arising out of the same act or transaction. Upon receiving notice from the district attorney under paragraph (b) of this subsection, the juvenile court shall dismiss, without prejudice, the juvenile court proceeding and enter any order necessary to transfer the matter or transport the person to the criminal court for further proceedings. Nothing in this paragraph affects the authority or jurisdiction of the juvenile court with respect to other matters or conduct.]

[(3)(a)] **(2)(a)** [A person charged with a crime under ORS 137.707 who is 16 or 17 years of age shall] **If the juvenile court enters an order of waiver under ORS 419C.349 (1)(a), the person waived may be charged with the commission of an offense listed in ORS 137.707 and may be prosecuted as an adult. The person may be de-**

tained in custody **only** in a detention facility, unless the **person is 16 or 17 years of age and the** director of the county juvenile department and the sheriff agree to detain the person in a jail or other place where adults are detained. A person detained in accordance with this paragraph is subject to release on the same terms and conditions as for adults.

(b) If a person [charged with a crime under ORS 137.707] **waived under ORS 419C.349 (1)(a)** is under 16 years of age, the person may not be detained, [either] before conviction, or after conviction but before execution of the sentence, in a jail or other place where adults are detained.

**SECTION 5.** ORS 137.707 is amended to read:

137.707. [(1)(a) Notwithstanding any other provision of law, when a person charged with aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c) of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.]

[(b) A district attorney, the Attorney General or a juvenile department counselor may not file in juvenile court a petition alleging that a person has committed an act that, if committed by an adult, would constitute aggravated murder or an offense listed in subsection (4) of this section if the person was 15, 16 or 17 years of age at the time the act was committed.]

[(2)] **(1)** When a person [charged under this section] **waived under ORS 419C.349 (1)(a)** is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in[, or based on,] the minimum sentence for any reason under ORS 421.121 or any other provision of law. **The person is eligible for a hearing and conditional release under ORS 420A.203 and 420A.206.**

**(2)** ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death **or life imprisonment without the possibility of release or parole.**

(3) The court shall commit the person to the legal and physical custody of the Department of Corrections.

(4) The offenses to which this section applies and the presumptive sentences are:

- (a)(A) Murder, as defined in ORS 163.115.....300 months
- (B) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095.....120 months
- (C) Attempt or conspiracy to commit murder, as defined in ORS 163.115.....90 months
- (D) Manslaughter in the first degree, as defined in ORS 163.118.....120 months
- (E) Manslaughter in the second degree, as defined in ORS 163.125.....75 months
- (F) Assault in the first degree, as defined in ORS 163.185.....90 months
- (G) Assault in the second degree, as defined in ORS 163.175.....70 months
- (H) Kidnapping in the first degree, as defined in ORS 163.235.....90 months
- (I) Kidnapping in the second degree, as defined in ORS 163.225.....70 months
- (J) Rape in the first degree, as defined in ORS 163.375....100 months
- (K) Rape in the second degree, as defined in ORS 163.365.....75 months
- (L) Sodomy in the first degree, as defined in ORS 163.405.....100 months
- (M) Sodomy in the second degree, as defined in ORS 163.395.....75 months
- (N) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.....100 months
- (O) Unlawful sexual penetration in the second degree, as defined in ORS 163.408.....75 months
- (P) Sexual abuse in the first degree, as defined in ORS 163.427.....75 months
- (Q) Robbery in the first degree, as defined in ORS 164.415.....90 months
- (R) Robbery in the second degree, as defined in ORS 164.405.....70 months
- (b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury.....90 months

- (B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.....70 months
- (C) Compelling prostitution, as defined in ORS 167.017 (1)(a), (b) or (d).....70 months
- (c) Aggravated vehicular homicide, as defined in ORS 163.149.....240 months

(5) If a person charged with an offense under this section is found guilty of a lesser included offense and the lesser included offense is:

(a) An offense listed in subsection (4) of this section, the court shall sentence the person as provided in [subsection (2)] **subsections (1) and (2)** of this section.

(b) Not an offense listed in subsection (4) of this section:

(A) But constitutes an offense for which waiver is authorized under ORS 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:

(i) Order that a presentence report be prepared;

(ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; [and]

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411; **and**

**(iv) Enter an order providing that all court records of the case are subject to the same limitations on inspection, copying and disclosure of records, reports and materials as those set forth under ORS 419A.255.**

(B) And is not an offense for which waiver is authorized under ORS 419C.349 (1)(b), the court may not sentence the person. The court shall:

(i) Order that a presentence report be prepared;

(ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; [and]

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411; **and**

**(iv) Enter an order providing that all court records of the case are subject to the same limitations on inspection, copying and disclosure of records, reports and materials as those set forth under ORS 419A.255.**

(6) When a person is charged under this section, other offenses based on the same act or transaction shall be charged as separate counts in the same accusatory instrument and consolidated for trial, whether or not the other offenses are aggravated

murder or offenses listed in subsection (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by the joinder and consolidation of offenses, the court may order an election or separate trials of counts or provide whatever other relief justice requires.

(7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty of aggravated murder or an offense listed in subsection (4) of this section and one or more other offenses, the court shall impose the sentence for aggravated murder or the offense listed in subsection (4) of this section as provided in [subsection (2)] **subsections (1) and (2)** of this section and shall impose sentences for the other offenses as otherwise provided by law.

(b) If a person charged and tried as provided in subsection (6) of this section is not found guilty of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349 (1)(b), the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:

(A) Order that a presentence report be prepared;

(B) Set forth in a memorandum any observations and recommendations that the court deems appropriate; [and]

(C) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411; and

**(D) Enter an order providing that all court records of the case are subject to the same limitations on inspection, copying and disclosure of records, reports and materials as those set forth under ORS 419A.255.**

**SECTION 6.** ORS 419C.349 is amended to read:

419C.349. (1) [The juvenile court, after a hearing] Except as otherwise provided in ORS 419C.364 or 419C.370, [may waive a youth to a circuit, justice or municipal court of competent jurisdiction for prosecution as an adult if] **the juvenile court shall conduct a waiver hearing when:**

[(1) The youth is 15 years of age or older at the time of the commission of the alleged offense;]

[(2) The youth, except as otherwise provided in ORS 419C.364 and 419C.370, is alleged to have committed a criminal offense constituting:]

**(a) The state files a motion requesting a waiver hearing in a case in which a petition has been filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years of age that, if committed by an adult, would constitute aggravated murder or an offense listed in ORS 137.707; or**

**(b) The state files a motion requesting a waiver hearing in a case in which a petition has been filed alleging that a youth has committed an act when the youth was 15, 16 or 17 years of age that, if committed by an adult, would constitute:**

[(a) Murder under ORS 163.115 or any aggravated form thereof;]

[(b)] **(A)** A Class A or Class B felony;

[(c)] **(B)** Any of the following Class C felonies:

[(A)] **(i)** Escape in the second degree under ORS 162.155;

[(B)] **(ii)** Assault in the third degree under ORS 163.165;

[(C)] **(iii)** Coercion under ORS 163.275 (1)(a);

[(D)] **(iv)** Arson in the second degree under ORS 164.315; or

[(E)] **(v)** Robbery in the third degree under ORS 164.395;

[(d)] **(C)** Any Class C felony in which the youth used or threatened to use a firearm; or

[(e)] **(D)** Any other [felony or any misdemeanor if the youth and the state stipulate to the waiver;] **crime that the state and the youth stipulate is subject to waiver.**

**(2) After the hearing, the juvenile court may waive the youth to a circuit, justice or municipal court of competent jurisdiction if:**

[(3)] **(a)** The youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved; and

[(4)] **(b)** The juvenile court, after considering the following criteria, determines by a preponderance of the evidence that retaining jurisdiction will not serve the best interests of the youth and of society and therefore is not justified:

[(a)] **(A)** The amenability of the youth to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court [which] that would have jurisdiction after transfer;

[(b)] **(B)** The protection required by the community, given the seriousness of the offense alleged, **and whether the youth can be safely rehabilitated under the jurisdiction of the juvenile court;**

[(c)] **(C)** The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;

[(d)] **(D)** The previous history of the youth, including:

[(A)] **(i)** Prior treatment efforts and out-of-home placements; and

[(B)] **(ii)** The physical, emotional and mental health of the youth;

[(e)] **(E)** The youth's prior record of acts [which] that would be crimes if committed by an adult;

[(f)] **(F)** The gravity of the loss, damage or injury caused or attempted during the offense;

[(g)] **(G)** The prosecutive merit of the case against the youth; and

[(h)] **(H)** The desirability of disposing of all cases in one trial if there were adult co-offenders.

**(3) The victim of the alleged offense has the right to appear at a hearing under this section and to provide the court with any information reasonably related to the court's determination.**

**(4) The right to counsel, and the appointment of counsel under ORS 419C.200, applies to a hearing under this section.**

**(5) The state has the right to have at least one psychiatrist or licensed psychologist of its selection examine the youth concerning the determination of whether to waive the youth under this section.**

**SECTION 7.** ORS 161.610 is amended to read:

161.610. (1) As used in this section, "firearm" has the meaning given that term in ORS 166.210.

(2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant during the commission of a felony may be pleaded in the accusatory instrument and proved at trial as an element in aggravation of the crime as provided in this section. When a crime is so pleaded, the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the title of the offense. The unaggravated crime shall be considered a lesser included offense.

(3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise provided in subsection (6) of this section, if a defendant is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime, the court shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section. Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall any person punishable under this section become eligible for work release, parole, temporary leave or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent to any reduction of imprisonment granted for good time served or time credits earned under ORS 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the court.

(4) The minimum terms of imprisonment for felonies having as an element the defendant's use or threatened use of a firearm in the commission of the crime shall be as follows:

(a) Except as provided in subsection (5) of this section, upon the first conviction for such felony, five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

(b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 20 years.

(c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of this subsection, 30 years.

(5) If it is the first time that the defendant is subject to punishment under this section, rather than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance with the rules of the Oregon Criminal Justice Commission.

(6) When a defendant who is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime is a person who was waived [from juvenile court] under ORS 137.707 (5)(b)(A), 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370, the court is not required to impose a minimum term of imprisonment under this section.

**SECTION 8.** ORS 161.620 is amended to read:

161.620. Notwithstanding any other provision of law, a sentence imposed upon any person waived [from the juvenile court] under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death or life imprisonment without the possibility of release or parole nor imposition of any mandatory minimum sentence except that a mandatory minimum sentence under:

**(1) ORS 137.707 shall be imposed, except as provided in ORS 137.712;**

[(1)] **(2) ORS 163.105 (1)(c) shall be imposed; and**

[(2)] **(3) ORS 161.610 may be imposed.**

**SECTION 9.** ORS 163A.130 is amended to read:

163A.130. (1) A person required to report as a sex offender under ORS 163A.025 (1)(a), (b) or (c), or required to report as a sex offender under the laws of another state as a result of an adjudication in an Oregon juvenile court, may file a petition for an order relieving the person of the obligation to report. The person must pay the filing fee established under ORS 21.135. If the person resides:

(a) In this state and is required to report under ORS 163A.025 (2) or (3), the petition must be filed in the juvenile court in which the person was adjudicated for the act that requires reporting.

(b) In another state and is required to report under ORS 163A.025 (4), the petition must be filed in the juvenile court in the county in which the person attends school or works.

(c) In another state and is required to report under the laws of the other state, the petition must be filed in the juvenile court in which the person was adjudicated for the act that requires reporting.

(2) If the act giving rise to the obligation to report would constitute:

(a) A Class A or Class B felony sex crime if committed by an adult, the petition may be filed no sooner than two years after the termination of juvenile court jurisdiction over the person or, if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than two years after the person is discharged from the jurisdiction of the board.

(b) A Class C felony sex crime if committed by an adult, the petition may be filed no sooner than 30 days before the termination of juvenile court jurisdiction over the person or, if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no sooner than 30 days before the person is discharged from the jurisdiction of the board.

(3)(a) The juvenile court in which a petition under this section is filed may transfer the matter to the juvenile court of the county that last supervised the person if the court determines that the convenience of the parties, the victim and witnesses require the transfer.

(b) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

(c) The person, the district attorney and the juvenile department are parties to a hearing on a petition filed under this section.

(4) The person filing the petition has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public. In determining whether the person has met the burden of proof, the juvenile court may consider but need not be limited to considering:

(a) The extent and impact of any physical or emotional injury to the victim;

(b) The nature of the act that subjected the person to the obligation of reporting as a sex offender;

(c) Whether the person used or threatened to use force in committing the act;

(d) Whether the act was premeditated;

(e) Whether the person took advantage of a position of authority or trust in committing the act;

(f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;

(g) The vulnerability of the victim;

(h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;

(i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;

(j) The person's willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;

(k) The person's ability and efforts to pay the victim's expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;

(L) Whether the person has participated in and satisfactorily completed a sex offender treatment

program or any other intervention, and if so the juvenile court may also consider:

(A) The availability, duration and extent of the treatment activities;

(B) Reports and recommendations from the providers of the treatment;

(C) The person's compliance with court, board or supervision requirements regarding treatment; and

(D) The quality and thoroughness of the treatment program;

(m) The person's academic and employment history;

(n) The person's use of drugs or alcohol before and after the adjudication;

(o) The person's history of public or private indecency;

(p) The person's compliance with and success in completing the terms of supervision;

(q) The results of psychological examinations of the person;

(r) The protection afforded the public by the continued existence of the records; and

(s) Any other relevant factors.

(5) In a hearing under this section, the juvenile court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(6) When a petition is filed under this section, the state has the right to have a psychosexual evaluation of the person conducted. The state shall file notice with the juvenile court of its intention to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile court for good cause shown may direct the state to select a different evaluator.

(7) As soon as practicable after a petition has been filed under this section, the district attorney or juvenile department shall make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section and, if the victim has requested, to inform the victim of the date, time and place of a hearing on the petition in advance of the hearing.

(8)(a) When a petition filed under this section is filed:

(A) While the person is under the jurisdiction of the juvenile court or the Psychiatric Security Review Board or less than three years after the date the jurisdiction is terminated, the court shall hold a hearing no sooner than 60 days and no later than 120 days after the date of filing.

(B) Three years or more after the date the juvenile court or board jurisdiction is terminated, the court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

(b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court



may extend the period of time in which a hearing on the petition must be held.

(9)(a) When the person proves by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public, the court shall grant the petition.

(b) Notwithstanding paragraph (a) of this subsection, the court may not grant a petition filed under this section before the date the juvenile court or board jurisdiction over the person is terminated.

(10) When a juvenile court enters an order relieving a person of the requirement to report under ORS 163A.025, the person shall send a certified copy of the juvenile court order to the Department of State Police.

(11) If a person commits an act [*that could be charged as a sex crime listed in ORS 137.707*] **for which the person could be waived under ORS 419C.349 (1)(a)** and the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person may stipulate that the person may not petition for relief under this section as part of an agreement that the [*person be subject to the jurisdiction of the juvenile court rather than being prosecuted as an adult under ORS 137.707*] **state not file a motion requesting waiver under ORS 419C.349 (1)(a)**.

(12) When a petition is filed under subsection (2)(b) of this section before the termination of juvenile court or board jurisdiction, if the person, or the parent or guardian of the person if the person is less than 18 years of age, requests counsel and is without sufficient financial means to employ suitable counsel to represent the person, for purposes of the petition described in this section, the court shall appoint suitable counsel to represent the person. Appointment of counsel under this subsection is subject to ORS 419C.200, 419C.203, 419C.206 and 419C.209.

**SECTION 10.** ORS 163A.135 is amended to read: 163A.135. (1) Except as provided in subsection (7) of this section, a person required to report under ORS 163A.025 (1)(d) may file a petition in the juvenile court for an order relieving the person of the duty to report. The person must pay the filing fee established under ORS 21.135. If the person resides:

(a) In this state and is required to report under ORS 163A.025 (2) or (3), the petition must be filed in the juvenile court of the county in which the person resides.

(b) In another state and is required to report under ORS 163A.025 (4), the petition must be filed in the juvenile court of the county in which the person attends school or works.

(2) If the act giving rise to the obligation to report would constitute:

(a) A Class A or Class B felony sex crime if committed in this state by an adult, the petition may be filed no sooner than two years after the termination of the other United States court's jurisdiction over the person.

(b) A Class C felony sex crime if committed in this state by an adult, the petition may be filed no

sooner than 30 days before the termination of the other United States court's jurisdiction over the person.

(3) The person filing the petition must submit with the petition all releases and waivers necessary to allow the district attorney for the county in which the petition is filed to obtain the following documents from the jurisdiction in which the person was adjudicated for the act for which reporting is required:

(a) The juvenile court petition;

(b) The dispositional report to the court;

(c) The order of adjudication or jurisdiction;

(d) Any other relevant court documents;

(e) The police report relating to the act for which reporting is required;

(f) The order terminating jurisdiction for the act for which reporting is required; and

(g) The evaluation and treatment records or reports of the person that are related to the act for which reporting is required.

(4) A person filing a petition under this section has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.

(5) Unless the court finds good cause for a continuance, the court shall hold a hearing on the petition no sooner than 90 days and no later than 150 days after the date the petition is filed.

(6) If a person who files a petition under this section is required to report as a sex offender for having committed an act that if committed in this state could have subjected the person to [*prosecution as an adult under ORS 137.707*] **waiver under ORS 419C.349 (1)(a)**, the court may not grant the petition notwithstanding the fact that the person has met the burden of proof established in subsection (4) of this section unless the court determines that to do so is in the interest of public safety.

(7) This section does not apply to a person who is required to register as a sex offender for life in the jurisdiction in which the offense occurred.

(8) In a hearing under this section, the court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(9) If the court is satisfied by clear and convincing evidence that the person is rehabilitated and that the person does not pose a threat to the safety of the public, the court shall enter an order relieving the person of the duty to report. When the court enters an order under this subsection, the person shall send a certified copy of the court order to the Department of State Police.

**SECTION 11.** ORS 339.317 is amended to read:

339.317. (1)(a) No later than five days after a person under 18 years of age is [*charged with a crime under ORS 137.707 or is*] waived under ORS

419C.349, 419C.352 or 419C.364, the district attorney or city attorney, if the person is waived to municipal court or, in the case of a juvenile department that has agreed to be responsible for providing the notice required under this section, the juvenile department shall give notice of the charge to the school administrator of the school attended by the person or to the school administrator of the school district in which the person resides. For purposes of this section, "school administrator" has the meaning given that term in ORS 419A.305.

(b) The district attorney, city attorney or juvenile department shall include in the notice the following:

- (A) The crime with which the person is charged;
  - (B) The name and date of birth of the person;
  - (C) The names and addresses of the person's parents or guardians;
  - (D) The name and contact information of the attorney for the person, if known;
  - (E) The name and contact information of the individual to contact for further information about the notice;
  - (F) Any conditions of release or terms of probation; and
  - (G) Any other conditions required by the court.
- (2) A person who sends records under this section is not civilly or criminally liable for failing to disclose the information under this section.

**SECTION 12.** ORS 339.319 is amended to read:

339.319. (1)(a) When a person under 18 years of age is convicted of a crime [*under ORS 137.707 or*] following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 (1)(b), the agency supervising the person or, in the case of a juvenile department that has agreed to be responsible for providing the notice required under this section, the juvenile department shall give notice of the conviction within five days following sentencing to the school administrator of the school attended by the person or to the school administrator of the school district in which the person resides. For purposes of this section, "school administrator" has the meaning given that term in ORS 419A.305.

(b) The agency supervising the person or the juvenile department shall include in the notice:

- (A) The name and date of birth of the person;
- (B) The names and addresses of the person's parents or guardians;
- (C) The crime of conviction;
- (D) The sentence imposed;
- (E) The name and contact information of the attorney for the person, if known;
- (F) The name and contact information of the individual to contact for further information about the notice;
- (G) Any conditions of release or terms of probation including, but not limited to, whether school attendance is a condition of the release; and
- (H) Any other conditions required by the court.

(2) An agency supervising a person or anyone employed by or acting on behalf of an agency super-

vising a person who sends records under this section is not civilly or criminally liable for failing to disclose the information under this section.

**SECTION 13.** ORS 339.321 is amended to read:

339.321. (1) No later than 15 days before the release or discharge of a person committed to the legal custody of the Department of Corrections or the supervisory authority of a county [*under ORS 137.707 or*] following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370, the department or supervisory authority or, in the case of a juvenile department that has agreed to be responsible for providing the notice required under this section, the juvenile department shall notify the following of the release or discharge if the person is under 21 years of age at the time of the release:

- (a) Law enforcement agencies in the community in which the person is going to reside; and
  - (b) The school administrator of the school the person will attend or the school administrator of the school district in which the person will reside.
- (2) The department, supervisory authority or the juvenile department shall include in the notification:
- (a) The name and date of birth of the person;
  - (b) The date of release or discharge;
  - (c) The person's address;
  - (d) The names and addresses of the person's parents or guardians;
  - (e) The name and contact information of the attorney for the person, if known;
  - (f) The name and contact information of the individual to contact for further information about the notice;

(g) Any conditions of release or terms of probation including, but not limited to, the type of supervision under which the person is released and whether school attendance is a condition of release; and

(h) Any other conditions required by the court.

(3) The department, supervisory authority or anyone employed by or acting on behalf of the department or supervisory authority who sends records under this section is not civilly or criminally liable for failing to disclose the information under this section.

(4) As used in this section, "school administrator" has the meaning given that term in ORS 419A.305.

**SECTION 14.** ORS 419C.005 is amended to read:

419C.005. (1) [*Except as otherwise provided in ORS 137.707.*] The juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and who has committed an act that is a violation, or that if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

(2) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a youth.

(3) The court does not have jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

(4) The court's jurisdiction over a person under this section or ORS 419C.067 continues until one of the following occurs:

(a) The court dismisses a petition filed under this chapter or waives the case under ORS 419C.340. If jurisdiction is based on a previous adjudication, then dismissal or waiver of a later case does not terminate jurisdiction under the previous case unless the court so orders.

(b) The court transfers jurisdiction of the case as provided in ORS 419C.053, 419C.056 and 419C.059.

(c) The court enters an order terminating jurisdiction.

(d) The person becomes 25 years of age.

(e) The court places the person under the jurisdiction of the Psychiatric Security Review Board as provided in ORS 419C.529. If the court also has jurisdiction over the person based on a previous adjudication under this chapter or ORS chapter 419B, placing a person under the jurisdiction of the board in a later case does not terminate wardship under the previous case unless the court so orders.

**SECTION 15.** ORS 419C.050 is amended to read: 419C.050. *[Except as otherwise provided in ORS 137.707,]* If during the pendency of a proceeding involving an allegation of a crime in any court other than a juvenile court it is ascertained that the age of the person who is the subject of the proceeding is such that the matter is within the exclusive jurisdiction of the juvenile court, it is the duty of the court in which the proceeding is pending to transfer the proceeding to the juvenile court of the county in which the proceeding is pending. The clerk of the court transferring the proceeding shall notify the clerk of the juvenile court of the transfer.

**SECTION 16.** ORS 419C.346 is amended to read: 419C.346. If the juvenile court waives a youth to another court under ORS 419C.349 (1)(b) or, *419C.355 and* 419C.370 for disposition as an adult, the juvenile court nevertheless may retain jurisdiction over the youth's parents or guardians under ORS 419C.570. However, if the court enters an order of waiver under ORS 419C.349 (1)(a) or 419C.364, jurisdiction over the parents or guardians under ORS 419C.570 shall terminate.

**SECTION 17.** ORS 419C.352 is amended to read: 419C.352. The juvenile court, after a hearing, except as provided in ORS 419C.364 or 419C.370, may waive a youth under 15 years of age at the time the act was committed to circuit court for prosecution as an adult if:

(1) The youth is represented by counsel during the waiver proceedings;

(2) The juvenile court makes the findings required under ORS 419C.349 [(3) and (4)] (2); and

(3) The youth is alleged to have committed an act or acts that if committed by an adult would constitute one or more of the following crimes:

(a) Murder or any aggravated form thereof under ORS 163.095 or 163.115;

(b) Rape in the first degree under ORS 163.375 (1)(a);

(c) Sodomy in the first degree under ORS 163.405 (1)(a); or

(d) Unlawful sexual penetration in the first degree under ORS 163.411 (1)(a).

**SECTION 18.** ORS 419C.355 is amended to read: 419C.355. The juvenile court shall make a specific, detailed, written finding of fact to support *[any determination]* **the findings made** under ORS 419C.349 [(3) and (4)] (2).

**SECTION 19.** ORS 419C.358 is amended to read: 419C.358. (1) **Except as otherwise provided in subsection (2) of this section and ORS 137.707 (6),** when a person is waived for prosecution as an adult, the person shall be waived only on the actual charges justifying the waiver under ORS 419C.349 [(2)] or 419C.352, as the case may be.

(2) Any nonwaivable charges arising out of the same act or transaction as the waivable charge shall be consolidated with the waivable charge *[for purposes of conducting the adjudicatory hearing on the nonwaivable charges]*.

**SECTION 20.** ORS 419C.361 is amended to read: 419C.361. (1)(a) Notwithstanding that the juvenile court has waived the case under ORS 419C.349, 419C.352, *[419C.355, 419C.358,]* 419C.364, *419C.367 and* or 419C.370, the court of waiver shall return the case to the juvenile court unless an accusatory instrument is filed in the court of waiver alleging, in the case of a person under *[16]* 15 years of age, a crime listed in ORS 419C.352 or, in the case of any other person, a crime *[listed in ORS 419C.349 (2). Also in the case of a waived person,]* **described in ORS 419C.349 (1).**

(b) When a trial has been held in the court of waiver upon an accusatory instrument alleging a crime listed in ORS 419C.349 [(2)] (1)(b) or 419C.352, as the case may be, and the person is found guilty of any lesser included offense that is not itself a waivable offense, the trial court shall not sentence the defendant therein, but the trial court shall order a presentence report to be made in the case, shall set forth in a memorandum such observations as the court may make regarding the case and shall then return the case to the juvenile court in order that the juvenile court make disposition in the case based upon the guilty finding in the court of waiver. Disposition shall be as if the juvenile court itself had found the youth to be in its jurisdiction pursuant to ORS 419C.005. The records and consequences of the case shall, in all respects, be as if the juvenile court itself had found the youth to be in its jurisdiction pursuant to ORS 419C.005. When the person is found guilty of a nonwaivable charge that was consolidated

with a waivable charge under ORS 419C.358, the case shall be returned to the juvenile court for disposition as provided in this subsection for lesser included offenses.

(2) Nothing in this section or ORS 419C.358 applies to a waiver under ORS 419C.364 or 419C.370.

**SECTION 21.** ORS 420.081 is amended to read:

420.081. (1) The total population of youth offenders confined in the youth correction facilities may not exceed the design capacity of the facilities designated for close custody purposes by the Director of the Oregon Youth Authority. The total population limit shall include offenders in the youth correction facility who were waived by the juvenile court to be prosecuted as adults *[or who were prosecuted as adults under ORS 137.707]*.

(2) The director by rule shall determine reasonable standards for care and treatment of youth offenders housed in youth correction facilities. Within the total limit established under subsection (1) of this section, the Director of the Oregon Youth Authority shall establish and impose a maximum allowable population level for each youth correction facility. The maximum allowable population shall not exceed the design capacity for the facility and shall be further limited by the ability of the facility to meet the standard of care and treatment established by rule under this subsection, protect communities, hold youth offenders accountable for their behavior and improve the competency of youth offenders to become responsible and productive members of their communities.

(3) The director by rule shall establish criteria upon which the decision to place a youth in a youth correction facility must be based, and which, in turn, shall be based upon behaviors and characteristics of youths otherwise eligible for commitment to a youth correction facility.

(4) After conferring with the juvenile court judges, the director shall develop and implement by rule, a method of controlling admissions to the youth correction facilities so as not to exceed maximum levels determined under subsections (1) and (2) of this section.

## SECOND LOOK

**SECTION 22.** ORS 420A.203 is amended to read:

420A.203. (1)(a) This section and ORS 420A.206 apply only to *[persons]* **a person** who:

(A) *[Were]* **Was** under 18 years of age at the time of the commission of the offense for which the *[persons were]* **person was** sentenced to a term of imprisonment, who committed the offense on or after June 30, 1995, and who *[were]* **was**:

*[(A)]* (i) Sentenced to a term of imprisonment of at least 24 months following waiver under ORS 419C.349 (1)(b), 419C.352, 419C.364 or 419C.370; or

*[(B)]* (ii) Sentenced to a term of imprisonment of at least 24 months under ORS 137.707 *[(5)(b)(A) or (7)(b).]* **or 137.712; or**

**(B)(i) Was under 18 years of age at the time of the commission of all offenses for which the person was sentenced to a term of imprisonment;**

**(ii) Is in the physical custody of the Oregon Youth Authority; and**

**(iii) Has a projected release date, as determined by the Department of Corrections, that falls on or after the person's 25th birthday and before the person's 27th birthday.**

(b) When a person described in paragraph (a)(A) of this subsection has served one-half of the sentence imposed **or when a person described in paragraph (a)(B) of this subsection attains 24 years and six months of age**, the sentencing court shall determine what further commitment or disposition is appropriate as provided in this section. As used in this subsection and subsection (2) of this section, "sentence imposed" means the total period of mandatory incarceration imposed for all convictions resulting from a single prosecution or criminal proceeding not including any reduction in the sentence under ORS 421.121 or any other statute.

(2)(a) No more than 120 days and not less than 60 days before the date on which a person has served one-half of the sentence imposed **or attains 24 years and six months of age**, the Oregon Youth Authority or the Department of Corrections, whichever has physical custody of the person, shall file in the sentencing court a notice and request that the court set a time and place for the hearing required under this section. The youth authority or department shall serve the person with a copy of the notice and request for hearing on or before the date of filing.

(b) Upon receiving the notice and request for a hearing under paragraph (a) of this subsection, the sentencing court shall schedule a hearing for a date not more than 30 days after the date on which the person will have served one-half of the sentence imposed **or attains 24 years and six months of age**, or such later date as is agreed upon by the parties.

(c) The court shall notify the following of the time and place of the hearing:

(A) The person and, **if the person is under 18 years of age**, the person's parents;

(B) The records supervisor of the correctional institution in which the person is incarcerated; and

(C) The district attorney who prosecuted the case.

(d) The court shall make reasonable efforts to notify the following of the time and place of the hearing:

(A) The victim and, **if the victim is under 18 years of age**, the victim's parents or legal guardian; and

(B) Any other person who has filed a written request with the court to be notified of any hearing concerning the transfer, discharge or release of the person.

**(e) Notwithstanding paragraph (b) of this subsection, the court may delay the hearing for good cause.**

(3) In a hearing under this section:

(a) The person and the state are parties to the proceeding.

(b) The person has the right to appear with counsel. If the person requests that the court appoint counsel and the court determines that the person is financially eligible for appointed counsel at state expense, the court shall order that counsel be appointed.

(c) The district attorney represents the state.

(d) The court shall determine admissibility of evidence as if the hearing were a sentencing proceeding.

(e) The court may consider, when relevant, written reports of the Oregon Youth Authority, the Department of Corrections and qualified experts, in addition to the testimony of witnesses. Within a reasonable time before the hearing, as determined by the court, the person must be given the opportunity to examine all reports and other documents concerning the person that the state, the Oregon Youth Authority or the Department of Corrections intends to submit for consideration by the court at the hearing.

(f) Except as otherwise provided by law or by order of the court based on good cause, the person must be given access to the records maintained in the person's case by the Oregon Youth Authority and the Department of Corrections.

(g) The person may examine all of the witnesses called by the state, may subpoena and call witnesses to testify on the person's behalf and may present evidence and argument. The court may permit witnesses to appear by telephone or other two-way electronic communication device.

(h) The hearing must be recorded.

(i) The hearing and the record of the hearing are open to the public.

(j) The question to be decided is which of the dispositions provided in subsection (4) of this section should be ordered in the case.

(k) The person has the burden of proving by clear and convincing evidence that the person has been rehabilitated and reformed, and if conditionally released, the person would not be a threat to the safety of the victim, the victim's family or the community and that the person would comply with the release conditions.

(4)(a) At the conclusion of the hearing and after considering and making findings regarding each of the factors in paragraph (b) of this subsection, the court shall order one of the following dispositions:

(A) Order that the person serve the entire remainder of the sentence of imprisonment imposed, taking into account any reduction in the sentence under ORS 421.121 or any other statute, with the person's physical custody determined under ORS 137.124, 420.011 and 420A.200.

(B) Order that the person be conditionally released under ORS 420A.206 at such time as the court may order, if the court finds that the person:

(i) Has been rehabilitated and reformed;

(ii) Is not a threat to the safety of the victim, the victim's family or the community; and

(iii) Will comply with the conditions of release.

(b) In making the determination under this section, the court shall consider:

(A) The experiences and character of the person before and after commitment to the Oregon Youth Authority or the Department of Corrections;

(B) The person's juvenile and criminal records;

(C) The person's mental, emotional and physical health;

(D) The gravity of the loss, damage or injury caused or attempted, during or as part of the criminal act for which the person was convicted and sentenced;

(E) The manner in which the person committed the criminal act for which the person was convicted and sentenced;

(F) The person's efforts, participation and progress in rehabilitation programs since the person's conviction;

(G) The results of any mental health or substance abuse treatment;

(H) Whether the person demonstrates accountability and responsibility for past and future conduct;

(I) Whether the person has made and will continue to make restitution to the victim and the community;

(J) Whether the person will comply with and benefit from all conditions that will be imposed if the person is conditionally released;

(K) The safety of the victim, the victim's family and the community;

(L) The recommendations of the district attorney, the Oregon Youth Authority and the Department of Corrections; and

(M) Any other relevant factors or circumstances raised by the state, the Oregon Youth Authority, the Department of Corrections or the person.

(5) The court shall provide copies of its disposition order under subsection (4) of this section to the parties, to the records supervisor of the correctional institution in which the person is incarcerated and to the manager of the institution-based records office of the Department of Corrections.

(6) The person or the state may appeal an order entered under this section. On appeal, the appellate court's review is limited to claims that:

(a) The disposition is not authorized under this section;

(b) The court failed to comply with the requirements of this section in imposing the disposition; or

(c) The findings of the court are not supported by substantial evidence in the record.

**(7) A person described in subsection (1)(a)(B) of this section may waive a hearing under this section.**

**SECTION 23.** ORS 137.712 is amended to read:

137.712. (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of manslaughter in the second degree as defined in ORS 163.125, as-

sault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395, unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other statute **and is eligible for a hearing and conditional release under ORS 420A.203 and 420A.206.**

(b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this subsection;

(B) A sentence of probation will be more effective than a prison term in reducing the risk of offender recidivism; and

(C) A sentence of probation will better serve to protect society.

(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on the record by a preponderance of the evidence:

(a) If the conviction is for manslaughter in the second degree:

(A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years of age;

(B) That the defendant is the mother or father of the victim;

(C) That the death of the victim was the result of an injury or illness that was not caused by the defendant;

(D) That the defendant treated the injury or illness solely by spiritual treatment in accordance with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual treatment would bring about the victim's recovery from the injury or illness;

(E) That no other person previously under the defendant's care has died or sustained significant physical injury as a result of or despite the use of spiritual treatment, regardless of whether the spiritual treatment was used alone or in conjunction with medical care; and

(F) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section or for criminal mistreatment in the second degree.

(b) If the conviction is for assault in the second degree:

(A) That the victim was not physically injured by means of a deadly weapon;

(B) That the victim did not suffer a significant physical injury; and

(C) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(c) If the conviction is for kidnapping in the second degree:

(A) That the victim was at least 12 years of age at the time the crime was committed; and

(B) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(d) If the conviction is for robbery in the second degree:

(A) That the victim did not suffer a significant physical injury;

(B) That, if the defendant represented by words or conduct that the defendant was armed with a dangerous weapon, the representation did not reasonably put the victim in fear of imminent significant physical injury;

(C) That, if the defendant represented by words or conduct that the defendant was armed with a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical injury; and

(D) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual abuse in the first degree:

(A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim; and

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense.

(f) If the conviction is for unlawful sexual penetration in the second degree:

(A) That the victim was 12 years of age or older at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile

court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim;

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense; and

(G) That the object used to commit the unlawful sexual penetration was the hand or any part thereof of the defendant.

(3) In making the findings required by subsections (1) and (2) of this section, the court may consider any evidence presented at trial and may receive and consider any additional relevant information offered by either party at sentencing.

(4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section refer are:

(a) A crime listed in ORS 137.700 (2) or 137.707 (4);

(b) Escape in the first degree, as defined in ORS 162.165;

(c) Aggravated murder, as defined in ORS 163.095;

(d) Criminally negligent homicide, as defined in ORS 163.145;

(e) Assault in the third degree, as defined in ORS 163.165;

(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

(g) Rape in the third degree, as defined in ORS 163.355;

(h) Sodomy in the third degree, as defined in ORS 163.385;

(i) Sexual abuse in the second degree, as defined in ORS 163.425;

(j) Stalking, as defined in ORS 163.732;

(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person felony under the rules of the Oregon Criminal Justice Commission;

(L) Arson in the first degree, as defined in ORS 164.325;

(m) Robbery in the third degree, as defined in ORS 164.395;

(n) Intimidation in the first degree, as defined in ORS 166.165;

(o) Promoting prostitution, as defined in ORS 167.012; and

(p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L) of this subsection.

(5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section violates a condition of probation by committing a new crime, the court shall revoke the probation and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Justice Commission.

(6) As used in this section:

(a) "Conviction" includes, but is not limited to:

(A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS 419C.005, if the person was at least 15 years of age at the time the person committed the offense that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include a juvenile court adjudication described in this subparagraph if the person successfully asserted the defense set forth in ORS 419C.522.

(B) A conviction in another jurisdiction for a crime that if committed in this state would constitute a crime listed in subsection (4) of this section.

(b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the current crime provided that the prior conviction is based on a crime committed in a separate criminal episode. "Previous conviction" does not include a conviction for a Class C felony, including an attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was entered within the 10-year period immediately preceding the date on which the current crime was committed.

(c) "Significant physical injury" means a physical injury that:

(A) Creates a risk of death that is not a remote risk;

(B) Causes a serious and temporary disfigurement;

(C) Causes a protracted disfigurement; or

(D) Causes a prolonged impairment of health or the function of any bodily organ.

### LIFE IMPRISONMENT

**SECTION 24. (1) A court may not impose a sentence of life imprisonment without the possibility of release or parole on a person who was under 18 years of age at the time of committing the offense.**

**(2) In determining the appropriate sentence for a person who was under 18 years of age at the time of committing the offense, if the court is provided information concerning the following circumstances, or any other relevant circumstances, the court shall consider those circumstances in imposing the sentence:**

**(a) The person's age, intellectual capacity and impetuosity at the time of the offense.**

**(b) The person's family and community environment, history of trauma and prior involvement in the juvenile dependency system at the time of the offense.**

**(c) The person's ability at the time of the offense to appreciate the risks and consequences of the conduct constituting the offense.**

**(d) The person's community involvement prior to the offense.**

**(e) Any peer or familial pressure to which the person was subjected at the time of the offense.**

(f) Whether and to what extent an adult was involved in the commission of the offense.

(g) The person's capacity for rehabilitation.

(h) The person's school records and special education evaluations.

(i) Any other mitigating factors or circumstances presented by the person.

(3)(a) If the court is provided with a report of a mental health evaluation of the person, the court shall give the evaluation substantial weight in imposing the sentence if:

(A) The evaluation was conducted by a psychiatrist or psychologist whose primary practice involves the treatment of adolescents; and

(B) The report includes the assessment of the person's degree of insight, judgment, self-awareness, emotional regulation and impulse control.

(b) Paragraph (a) of this subsection does not constitute a requirement that a person obtain or submit an evaluation for sentencing.

(4) When sentencing a person who was under 18 years of age at the time of committing the offense, under no circumstances may the court consider the age of the person as an aggravating factor.

(5) When sentencing a person who was under 18 years of age at the time of committing an offense to a term of imprisonment, the court shall indicate in the judgment:

(a) The age of the person at the time of committing the offense; and

(b) That the person is eligible for a hearing and release under section 25 of this 2019 Act.

**SECTION 25.** (1)(a) A person convicted of an offense or offenses committed when the person was under 18 years of age, who is serving a sentence of imprisonment for the offense or offenses, is eligible for release on parole or post-prison supervision as provided in this section after the person has served 15 years of imprisonment.

(b) Nothing in this section is intended to prevent a person from being released prior to serving 15 years of imprisonment under any other provision of law.

(c) As used in this subsection, "served 15 years of imprisonment" means that 15 years have passed since the person began serving the sentence, including pretrial incarceration but not including any reduction in sentence under ORS 421.121 or any other statute.

(2) This section applies notwithstanding the fact that the person was:

(a) Sentenced to a minimum sentence under ORS 163.105, 163.115 or 163.155.

(b) Sentenced to a mandatory minimum sentence under ORS 137.700, 137.707 or 137.717, a determinate sentence under ORS 137.635 or a sentence required by any other provision of law.

(c) Sentenced to two or more consecutive sentences under ORS 137.123.

(3) When a person eligible for release on parole or post-prison supervision as described in subsection (1) of this section has served 15 years of imprisonment, the State Board of Parole and Post-Prison Supervision shall hold a hearing. The hearing must provide the person a meaningful opportunity to be released on parole or post-prison supervision.

(4) The board may require the person, before holding a hearing described in this section, to be examined by a psychiatrist or psychologist with expertise in adolescent development. Within 60 days of the evaluation, the examining psychiatrist or psychologist shall file a written report of the findings and conclusions of the examination with the board. A certified copy of the report shall be provided to the person and the person's attorney.

(5) During a hearing under this section, the board shall consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult and the diminished culpability of minors as compared to that of adults. The board shall also consider the following circumstances, if relevant to the specific person and offense:

(a) The age and immaturity of the person at the time of the offense.

(b) Whether and to what extent an adult was involved in the offense.

(c) The person's family and community circumstances at the time of the offense, including any history of abuse, trauma and involvement in the juvenile dependency system.

(d) The person's subsequent emotional growth and increased maturity during the person's imprisonment.

(e) The person's participation in rehabilitative and educational programs while in custody if such programs have been made available to the person and use of self-study for self-improvement.

(f) A mental health diagnosis.

(g) Any other mitigating factors or circumstances presented by the person.

(6) Under no circumstances may the board consider the age of the person as an aggravating factor.

(7) If the board finds that, based on the consideration of the age and immaturity of the person at the time of the offense and the person's behavior thereafter, the person has demonstrated maturity and rehabilitation, the board shall release the person as follows:

(a) For a person sentenced under ORS 163.105, 163.115 or 163.155, the board shall set a release date that is not more than 60 days from the date of the hearing and, notwithstanding section 28, chapter 790, Oregon Laws 1989, the person shall be released on parole in accordance with ORS 144.125, 144.260 and 144.270.



(b) A person sentenced to a term of imprisonment under a provision of law other than ORS 163.105, 163.115 or 163.155 shall be released on post-prison supervision in accordance with ORS 144.096 and 144.098 within 60 days of the date of the hearing.

(8) Unless the context requires otherwise, the provisions of ORS 144.260 to 144.380 apply to a person released on parole under subsection (7)(a) of this section.

(9) If the board determines that the person has not demonstrated maturity and rehabilitation under subsection (7) of this section, the board may postpone a subsequent hearing to a date that is at least two years but no more than 10 years from the date of the hearing.

(10) The person may waive a hearing under this section. Notwithstanding waiver of the hearing, the board shall hold a hearing under this section upon the person's written request.

(11) The board shall provide notice of the hearing to:

(a) The district attorney of the county in which the person was convicted; and

(b) The victim of any offense for which the person is serving a sentence, if the victim requests to be notified and furnishes the board with a current address.

(12) A person has the right to counsel, including counsel appointed at board expense, at a hearing under this section.

(13) The board may adopt rules to carry out the provisions of this section.

**SECTION 26.** ORS 144.185 is amended to read:

144.185. Before making a determination regarding a prisoner's release on parole as provided by ORS 144.125 or section 25 of this 2019 Act, the State Board of Parole and Post-Prison Supervision may cause to be brought before it current records and information regarding the prisoner, including:

(1) Any relevant information which may be submitted by the prisoner, the prisoner's attorney, the victim of the crime, the Department of Corrections, or by other persons;

(2) The presentence investigation report specified in ORS 144.791 or if no such report has been prepared, a report of similar content prepared by institutional staff;

(3) The reports of any physical, mental and psychiatric examinations of the prisoner;

(4) The prisoner's parole plan; and

(5) Other relevant information concerning the prisoner as may be reasonably available.

**SECTION 27.** ORS 163.105 is amended to read:

163.105. Notwithstanding the provisions of ORS chapter 144 and ORS 421.450 to 421.490:

(1)(a) Except as otherwise provided in ORS 137.707, when a defendant is convicted of aggravated murder as defined by ORS 163.095, the defendant shall be sentenced, pursuant to ORS 163.150, to

death, life imprisonment without the possibility of release or parole or life imprisonment.

(b) A person sentenced to life imprisonment without the possibility of release or parole under this section shall not have that sentence suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may not parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(c) If sentenced to life imprisonment, the court shall order that the defendant shall be confined for a minimum of 30 years without possibility of parole[,] or release to post-prison supervision **except as provided in section 25 of this 2019 Act, and without the possibility of** release on work release or any form of temporary leave or employment at a forest or work camp.

(2) At any time after completion of a minimum period of confinement pursuant to subsection (1)(c) of this section, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing, the prisoner has:

(a) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(b) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(c) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(3) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board members or, if the chairperson requires all voting members to participate, a unanimous vote of all voting members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise the board shall deny the relief sought in the petition.

(4) If the board denies the relief sought in the petition, the board shall determine the date of the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS 144.285.

(5) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

**SECTION 28.** ORS 163.115 is amended to read:

163.115. (1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

(b) When it is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

(A) Arson in the first degree as defined in ORS 164.325;

(B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

(C) Burglary in the first degree as defined in ORS 164.225;

(D) Escape in the first degree as defined in ORS 162.165;

(E) Kidnapping in the second degree as defined in ORS 163.225;

(F) Kidnapping in the first degree as defined in ORS 163.235;

(G) Robbery in the first degree as defined in ORS 164.415;

(H) Any felony sexual offense in the first degree defined in this chapter;

(I) Compelling prostitution as defined in ORS 167.017; or

(J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment.

(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.

(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:

(a) Was not the only participant in the underlying crime;

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;

(c) Was not armed with a dangerous or deadly weapon;

(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the victim was a dependent person who was at least 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the dependent person or the guardian of the dependent person.

(5) Except as otherwise provided in ORS 163.155 and section 25 of this 2019 Act:

(a) A person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board members or, if the chairperson requires all voting members to participate, a unanimous vote of all voting members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison

supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

(e) If the board denies the relief sought in the petition, the board shall determine the date of the subsequent hearing, and the prisoner may petition for an interim hearing, in accordance with ORS 144.285.

(f) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

(6) As used in this section:

(a) "Assault" means the intentional, knowing or reckless causation of physical injury to another person. "Assault" does not include the causation of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.

(b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to replace or affect the duty or standard of care required under ORS chapter 677.

(c) "Pattern or practice" means one or more previous episodes.

(d) "Torture" means the intentional infliction of intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.

**SECTION 29.** ORS 163.155 is amended to read:

163.155. (1) When a defendant, who was at least 15 years of age at the time of committing the murder, is convicted of murdering a pregnant victim under ORS 163.115 (1)(a) and the defendant knew that the victim was pregnant, the defendant shall be sentenced to life imprisonment without the possibility of release or parole **if the person was at least 18 years of age at the time of committing the offense** or to life imprisonment. The court shall conduct a sentencing proceeding to determine whether the defendant shall be sentenced to life imprisonment without the possibility of release or parole as described in subsection (4) of this section or to life imprisonment as described in subsection (5) of this section. If the defendant waives all rights to a jury sentencing proceeding, the court shall conduct the sentencing proceeding as the trier of fact. The procedure for the sentencing proceeding, whether before a court or a jury, shall follow the procedure of ORS 163.150 (1)(a), as modified by this section.

(2) Following the presentation of evidence and argument under subsection (1) of this section, the

court shall instruct the jury that the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section, unless after considering all of the evidence submitted, 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole as described in subsection (5) of this section. If 10 or more members of the jury do not find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment without the possibility of release or parole as described in subsection (4) of this section. If 10 or more members of the jury find there are sufficient mitigating circumstances to warrant life imprisonment with the possibility of release or parole, the trial court shall sentence the defendant to life imprisonment as described in subsection (5) of this section.

(3) Nothing in this section precludes the court from sentencing the defendant to life imprisonment, as described in subsection (5) of this section, or life imprisonment without the possibility of release or parole, as described in subsection (4) of this section, pursuant to a stipulation of sentence or stipulation of sentencing facts agreed to and offered by both parties if the defendant waives all rights to a jury sentencing proceeding.

(4) A sentence of life imprisonment without the possibility of release or parole under this section may not be suspended, deferred or commuted by any judicial officer, and the State Board of Parole and Post-Prison Supervision may neither parole the prisoner nor reduce the period of confinement in any manner whatsoever. The Department of Corrections or any executive official may not permit the prisoner to participate in any sort of release or furlough program.

(5) If the defendant is sentenced to life imprisonment, the court shall order that the defendant be confined for a minimum of 30 years without possibility of parole[,] **or** release to post-prison supervision **except as provided in section 25 of this 2019 Act, and without the possibility of** release on work release or any form of temporary leave or employment at a forest or work camp.

(6) At any time after completion of the minimum period of confinement pursuant to subsection (5) of this section, the board, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue shall be whether the prisoner is likely to be rehabilitated within a reasonable period of time. The proceeding shall be conducted in the manner prescribed for a contested case hearing under ORS chapter 183, except that:

(a) The prisoner has the burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time;

(b) The prisoner has the right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(c) The prisoner has the right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the board pursuant to rules adopted by the board.

(7) If, upon hearing all of the evidence, the board, upon a unanimous vote of three board members or, if the chairperson requires all voting members to participate, a unanimous vote of all voting members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release on post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release on post-prison supervision or work release and may set a release date. Otherwise the board shall deny the relief sought in the petition.

(8) Not less than two years after the denial of the relief sought in a petition under this section, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

### VICTIM NOTIFICATION

**SECTION 30.** (1) The division of the Department of Justice providing victim and survivor services shall, in consultation with district attorney victim assistance programs and community-based victim service providers, develop model policies for providing notice to victims concerning waiver hearings under ORS 419C.349 (1)(a) and hearings conducted pursuant to ORS 420A.203. The policies must ensure that victim notification is provided in a trauma-informed and culturally specific manner.

(2) Prior to a waiver hearing under ORS 419C.349 (1)(a) or a hearing conducted pursuant to ORS 420A.203, notice of the hearing shall be provided to the victim of the offense by the district attorney's victim assistance program in accordance with the model policies described in subsection (1) of this section, and in a manner that informs the victim of the victim's rights. The district attorney's victim assistance program shall also provide to the victim accompaniment to court hearings and referrals

to community-based victim services that are, where available, culturally specific.

### MISCELLANEOUS

**SECTION 31.** (1) Sections 24 and 25 of this 2019 Act and the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 by sections 1 to 23 and 26 to 29 of this 2019 Act become operative on January 1, 2020.

(2) The State Board of Parole and Post-Prison Supervision, the Oregon Youth Authority, the Department of Corrections and the Judicial Department may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board, authority or department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board, authority or department by sections 24 and 25 of this 2019 Act and the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 by sections 1 to 23 and 26 to 29 of this 2019 Act.

**SECTION 32.** Sections 24 and 25 of this 2019 Act and the amendments to ORS 137.071, 137.124, 137.705, 137.707, 137.712, 144.185, 161.610, 161.620, 163.105, 163.115, 163.155, 163A.130, 163A.135, 339.317, 339.319, 339.321, 419C.005, 419C.050, 419C.346, 419C.349, 419C.352, 419C.355, 419C.358, 419C.361, 420.011, 420.081 and 420A.203 by sections 1 to 23 and 26 to 29 of this 2019 Act apply to sentences imposed on or after January 1, 2020.

**SECTION 33.** The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.

**SECTION 34.** This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

Approved by the Governor July 22, 2019  
Filed in the office of Secretary of State July 29, 2019  
Effective date September 29, 2019